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This report was prepared by the staff of the Coordinating Council for Higher Education in response to Senate Concurrent Resolution No. 43, which directed the Council to "... study the current rules of tenure in the University of California, the California State Colleges, and the public junior colleges; compare such rules of tenure in public and private institutions of higher education in California and in other states; state the objectives of tenure, and set forth policy alternatives to achieve those objectives..." Chapter 1 discusses the general objectives and elements of academic tenure in higher education. Chapter 2 presents and compares the tenure plans of selected private institutions in California with those of the public higher education system. Chapter 3 compares the tenure plans of the University of California and the State Colleges with those of institutions in the US on which salaries in California are based; statewide tenure plans of selected states and those of a nationwide sample of junior colleges are also compared with the California Junior College tenure plan. Chapter 4 presents policy alternatives that would achieve the objectives of tenure. The Council concludes that there is no alternative to tenure as a means of providing academic freedom and economic security, but that there is room for improvement in the procedures of some tenure plans. (WM)

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COORDINATING
CALIFORNIA'S
HIGHER
EDUCATION

ACADEMIC TENURE IN CALIFORNIA PUBLIC HIGHER EDUCATION

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

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FOREWORD

This study has been prepared by the Council staff in response to Senate Concurrent Resolution No. 43 which directs the Coordinating Council for Higher Education to:

> ". . . study the current rules of tenure in the University of California, the California State Colleges, and the public junior colleges; compare such rules of tenure in public and private institutions of higher education in California and in other states; state the objectives of tenure; and set forth policy alternatives to achieve those objectives. . ."[1]

To satisfy the resolution this report first directs its attention to the general objectives and elements of a tenure plan in higher education. Information with respect to the objectives and elements was obtained from an extensive review of the literature on tenure and from responses from many higher education institutions and organizations to a Council request for such information.

Attention is then directed to the specific tenure plans of the three public segments and selected private institutions in California higher education and to comparing them. Data obtained from the public segments were supplemented by intensive staff review of tenure law in the California Education and Administrative Codes and the By-Laws of the Regents of the University of California. Data on the private institutions were obtained through the cooperation of the Association of Independent California Colleges and Universities. The tenure plans of the University of California and California State Colleges are also compared with the tenure plans of the institutions with which the University and State Colleges are compared for salary purposes. These institutions extend over the entire United States. Statewide tenure plans of selected states and tenure plans of a nationwide sample of individual Junior Colleges are utilized for comparison with the California Junior College tenure plan.

Attention is finally directed to possible policy alternatives to achieve the objectives of tenure.

The report has been prepared by Courtland L. Washburn of the Council staff under the general direction of Willard Spalding.

Owen Albert Knorr
Director

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[1] See Appendix A for complete resolution.

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Chapter I

INTRODUCTION

Tenure is a term sometimes used in higher education to indicate the duration for which a faculty member is employed. It is more often used, however, to refer to a faculty member's right to continued employment, year after year, until retirement or removal either for adequate cause under due process or because of financial exigencies of the institutions employing him. It is this latter meaning that is under study in this report. Throughout the report the term "academic tenure" or occasionally "tenure" alone will be used to indicate this condition of continued employment, rather than such synonomous terms such as continuing tenure, permanent tenure or indefinite tenure.

Employment security is not unique to the educational profession. The writers of the United States Constitution recognized the principle by providing "life-tenure" for Federal judges wherein they were guaranteed the right to hold office until death. Federal, state and local governments provide employees with similar protection against nonretention, under the title "civil service".

Byse and Joughlin in a study of academic tenure in American higher education pointed out that the essential characteristic of tenure as the term will be used in this report, is ". . . continuity of service, in that the institution in which the teacher serves has in some manner--either as a legal obligation or as a moral commitment--relinquished the freedom or power it otherwise would possess to terminate the teacher's service."[1]

THE OBJECTIVES OF ACADEMIC TENURE

Academic Freedom

The principle objective of academic tenure, as stated by Byse and Joughlin is to ". . .enable a faculty member to teach, study, and act free from a large number of restraints and pressures which otherwise would inhibit independent thought and action."[2] This objective, generally referred to as "academic freedom" is a concept difficult to define without ambiguity, for although there is agreement on the principle, there is much confusion and debate with regard to its purpose, scope, and implementation.

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[1]Byse, Clark and Joughlin, Towne, Tenure in American Higher Education, (Ithaca, N. Y.; Cornell University Press, 1959), p. 2.

[2]Loc. cit.

Machlup[1] offered the following definition in his 1955 article on some misconceptions concerning academic freedom.

> Academic freedom consists in the absence of, or protection from, such restraints or pressures--chiefly in the form of sanctions threatened by state or church authorities or by the authorities, faculties, or students of colleges and universities, but occasionally also by other power groups in society--as are designed to create in the minds of academic scholars (teachers, research workers, and students in colleges and universities) fears and anxieties that may inhibit them from freely studying and investigating whatever they are interested in, and from freely discussing, teaching, or publishing whatever opinions they have reached.

The 1940 Statement of Principles on Academic Freedom and Tenure[2] developed jointly by the American Association of University Professors and the Association of American Colleges, defines academic freedom as follows:

> (a) The teacher is entitled to full freedom, in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
>
> (b) The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

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[1]Machlup, Fritz, "On Some Misconceptions Concerning Academic Freedom", AAUP Bulletin, 41; 753-84 (Winter, 1955).

[2]In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges agreed upon a restatement of principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure. This restatement is known to the profession as the 1940 Statement of Principles on Academic Freedom and Tenure, and is officially endorsed by some 66 organizations. See Appendix B for complete statement and listing of endorsing organizations.

> (c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

The California Teachers Association's policy on academic freedom states:

> Academic Freedom is 'the opportunity for the teacher to teach, and for the teacher and the student to study, without coercion, censorship, or other forms of restrictive interference. . .' (Good, C., Dictionary of Education)
>
> Academic Freedom requires the maintenance of a climate of intellectual freedom which encourages the flow of ideas and the ablest instruction with the recognition that freedom to teach and freedom to learn imply both rights and responsibilities within the framework of law.

Webster provides the following definition of academic freedom:

> Freedom (as of a professor) to teach according to personal convictions about what is or appears to be the truth without fear of hinderance, loss of position, or other reprisal."[1]

The Coordinating Board, Texas College and University System adopted the following statement on academic freedom in October, 1957, as one of several guiding principles designed to aid Texas colleges and universities in evaluating the conditions of academic freedom, tenure, and responsibility that prevail on each campus.

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[1]Websters 3rd New International Dictionary, Unabridged, copywrite 1961.

> Institutions of higher education are conducted for the common good. The common good depends upon a free search for truth and its free expression. Hence, it is essential that the faculty member be free to pursue scholarly inquiry without undue restriction, and to voice and publish his conclusions concerning the significance of evidence that he considers relevent. He must be free from the corrosive fear that others, inside or outside the university community, because their vision may differ from his own, may threaten his professional career or the material benefits accruing from it.
>
> Each faculty member is entitled to full freedom in the classroom in discussing the subject which he teaches. Each faculty member is also a citizen of his nation, state, and community; and when he speaks, writes, or acts as such, must be free from institutional censorship or discipline.[1]

Definitions of academic freedom from other sources would provide further evidence that there is general agreement regarding the concept of academic freedom. Nevertheless, when the concept is subjected to intense analysis, deep controversy and differences of opinions emerge.

Byse and Joughlin point out that "Academic freedom and tenure do not exist because of a peculiar solicitude for the human beings who staff our academic institutions. They exist, instead, in order that society may have the benefit of honest judgment and independent criticism which otherwise might be withheld because of fear of offending a dominant social group or transient social attitude."[2]

The California Colleges and University Faculty Association, in their statement of professional ethics point out that:

> Academic freedom is a special freedom, necessary to the mission of professors in a university. Professional responsibility is its logical correlative. As individuals, professors have the responsibility to conduct themselves in ways that will promote the achievement of the purposes for which academic freedom exists. And as members of a profession possessed of certain rights of self-government,

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[1] "Texas Coordinating Board Statement on Academic Freedom, Tenure, and Responsibility", AAUP Bulletin, December, 1957; p. 405.

[2] Byse and Joughlin, op. cit., p. 4.

> college and university professors as a group have an obligation to keep their house in order and to take such steps as may be necessary to the fulfillment of their professional mission.[1]

The position of the American Association of University Professors with respect to academic freedom was amplified in a statement appearing in the AAUP Bulletin, Summer, 1968, which stated:

> Colleges and universities are dependent for their very life upon maintenance of the principle set forth in the 1940 Statement of Principles on Academic Freedom and Tenure that 'the common good depends upon the free search for truth and its free exposition' of this principle is respect for the right of all to speak, to listen, to try to persuade by reasoned argument, and to form a judgment based on full and free exposition and discussion.
>
> The right to speak encompasses diverse modes of expression. It does not encompass action to forclose full, open, and orderly debate, nor does it countenance actions by individuals or groups to restrict the free speech, actions, or academic freedom of others or to keep teachers and students from their central tasks of teaching and learning. The preservation on the campus of the free search for truth, freedom to teach, and freedom to learn is a common and primary commitment of all members of the academic community--faculty, administration, students, and governing boards.
>
> In view of some recent events, the Fifty-fourth Annual Meeting deems it important to state its conviction that action by individuals or groups to prevent speakers invited to the campus from speaking, to disrupt the educational operations of the institutions in the course of demonstrations, or to obstruct and restrain other members of the academic community and campus visitors by physical force is destructive of the pursuit of learning and of a free society. All components of the academic community are under a strong obligation to protect its processes from these tactics.[2]

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[1]Adapted from the Bulletin of the American Association of University Professors, Vol. 44, No. 4, 1958.

[2]AAUP Bulletin, Vol. 54, No. 2, p. 244.

The statement on academic freedom adopted by the Texas Coordinating Board, which was quoted above, was accompanied by the following statement on academic responsibility:

> The concept of academic freedom must be accompanied by an equally demanding concept of responsibility, shared by governing boards, administrators, and faculty members.
>
> The essential responsibilities of governing boards and administrators are set forth in the Standards for Colleges, adopted by the Southern Association of Colleges and Schools, as updated and revised.
>
> The fundamental responsibilities of a faculty member as a teacher and scholar include a maintenance of competence in his field of specialization and the exhibition of such competence in lectures, discussions or publications.
>
> Exercise of professional integrity by a faculty member includes recognition that the public will judge his profession and his institution by his statements. Therefore, he should strive to be accurate, to exercise appropriate restraint, to show respect for the opinions of others, and to avoid creating the impression that he speaks or acts for his college or university when he speaks or acts as a private person.
>
> A faculty member should be judicious in the use of controversial material in the classroom and should introduce such material only as it has clear relationship to his subject field.
>
> A faculty member has the responsibility to provide due notice of his intention to interrupt or terminate institutional services.[1]

Economic Security

A second important objective of academic tenure is the assurance of economic security as an aid in attracting to and retaining in the profession individuals of outstanding ability.

Preservation of a Professional Status

A third objective of tenure is the preservation of a professional status and the maintenance of high standards of performance that a profession assures[2]--an objective that requires the security of tenure.

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[1] Ibid., pp. 405-406.

[2] Stene, Edwin O., "Bases of Academic Tenure", American Association/University Professors, B51: 584-891, 1955.

Development of a Sense of Belonging

An additional objective as offered by E. O. Stene,[1] is the development of a sense of "belonging". As stated by Stene:

> ". . . recent studies and investigations in the fields of psychology and the social sciences indicate that interest in one's work, work adjustment, and productive output tend to be higher when the workers feel that they are an integral part of the organization which they serve than when they regard the organization as something apart from themselves. Professional people are not above the influence of these simple human desires. . . . Highly productive effort in collegiate teaching and research, therefore, is dependent upon the existence of a general feeling among faculty members that they are a part of the institution, that they can identify their interests with its interests, and that their successes are its successes.
>
> But a sense of belonging depends upon an assurance that the ties of service are deep, and that each individual has the assurance of opportunity to retain his association as long as his service meets reasonable standards of adequacy. Such assurance does not come from a necessity of satisfying the judgment of one man, or even a small group of administrative officers. Rather, it requires that involuntary separation be sanctioned only through procedures that would indicate the probability that the decision represents the collective judgment of one's associates--or what would be their collective judgment if all heard the evidence and were free from the influence of personal ties."

Preserving an Institution of Higher Education's Functions of Encouraging the Free Search for Truth and the Free Expression of Truth

The dual objectives of preserving an institutions primary functions of encouraging the free search for truth and the free expression of truth are clearly implicit in much that has been written about tenure. Academic tenure for faculty means little if institutions where they work are not preserving these functions.

One way in which an institution preserves its primary function is through selecting and retaining faculty who will perform at appropriate levels of quality in their respective fields of

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[1] Ibid., pp. 587-589

competence. A second way, is through divesting itself of faculty members who do not perform at appropriate levels of quality in their respective fields of competence and all acceptable reasons for dismissal, except that of financial exigencies of the institution, are related rather closely to impairments in a faculty members performance in his field of competence.

Segmental Statements on Objectives of Tenure

The University of California responded as follows to a request for the objectives of tenure in the University:

> This principle of continuing appointments after probation is well-established in education (and government agenices) throughout the world. This enables the faculty member to teach, study and write with freedom from pressures and restraints that would exist if he could be dismissed capriciously by his dean or president. In expanding our knowledge and developing new ideas the scholar often is confronted by the supporters of tradition and custom. Society must encourage the scholars who seek to present new ideas and discoveries in all fields of thought and research. The existence of a policy of continuous tenure of appointment is essential for this aspect of the universities' activity. The academic scholar seeks the freedoms that the world has fought for: freedom from fear, freedom from want, freedom of speech and expression, and freedom of worship. Those scholars who boldly explore the frontiers will find that an effective policy of continuing tenure is their most effective guarantee of these freedoms.[1]

One Junior College district reported its objectives of tenure as follows:

> Tenure is granted in this districts to protect an instructor from capricious actions of his colleagues, a department chairman or the administration. We feel that tenure, in as much as it enhances employment security, tends to maximize an

[1] As contained in a letter from the University Vice-President--Educational Relations to the Director of Coordinating Council responding to a request for information on University Tenure Policy and Procedure.

> instructor's freedom to search for truth and to express that truth as he sees it. We feel an instructor who has employment security is able to devote himself more fully to his profession.

Another Junior College reported:

> ". . . the objectives of tenure to provide the classroom instructor of above average ability with sufficient security to free him of unnecessary worry, thereby making it possible for him to make his maximum contribution to the District. I believe in the long standing view, held by many of us for nearly half a century, that tenure makes a good teacher an even better one."

The President of a private institution responded:

> ". . . the objectives of tenure in private colleges and universities are precisely the same as in all other educational institutions, most specifically, the preservation of academic freedom for members of the faculty."

The California State Colleges stated their objectives of tenure as:[1]

> Tenure is a vital part of the academic scene because of the particular nature of an academic institution. In a sense an academic institution must preserve a timeless quality. The pursuit of an ever increasing understanding of man and his universe must be done without fear of interruption of the development of this stream of knowledge by the popular conceptions usually present in a less than perfect world. For the welfare of society as a whole, it is important that this be done with a maximum degree of effectiveness and with a minimum degree of intrusion of outside influences based on transient conventional beliefs. A faculty member needs to be reasonably secure in pursuing

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[1] Statement by the Assistant Chancellor, Faculty and Staff Affairs, Office of the Chancellor, California State Colleges, in response to a Council staff request for a statement on the State College objectives of tenure.

his area of expertise as a scholar, teacher and researcher with a minimum degree of concern with contemporary interpretation of the nature of his professional activities.

More specifically, tenure protects the individual from external pressure and from arbitrary action or the effect of whim or caprice. At the same time it does not protect him from discipline for cause given the use of academic due process. By offering these protections and a fair means of appraising whether the faculty member is properly discharging his professional responsibilities, tenure provides reasonable though not absolute continuing employment. Having earned such status, a faculty member will usually prefer to remain at the college where he has earned it and thus a normal tenure policy is also of benefit to the institution which obtains a stable faculty as a result of granting tenure.

The Office of the Chancellor of the Board of Governors of the California Community Colleges stated that:

1. Provide an academic atmosphere free of worry to enable faculty to perform the best work possible in the classroom.
2. Permit scholarly inquiry and voicing of conclusions without undue restraint.
3. Eliminate the threat of dismissal without due cause.
4. Insure a high level of morale and maintain stability of staff.
5. Extend the entitlement of a fair hearing to all certificated employees without prejudice.
6. Protect from any capricious actions of colleagues or administration.
7. Extend an opportunity to correct deficiencies in performance.
8. Grant personal security, improving effectiveness of performance.

ELEMENTS OF A TENURE PLAN

An institutions' tenure plan may be formalized in documents which prescribe policies and regulations or it may be firmly established through unwritten regulations wherein tenure is granted without official commitment.

Tenure established by written policy[1] may be in the basic charter of the institution, in legislative enactments, in implementing trustee or regental rulings such as statutes, by-laws, resolutions, operating manuals, statement of policy, expressions of agreement with American Association of University Professors' principles of academic freedom and tenure, in decisions having precedent value, or in implementing rulings by public officials. Written policy may also be in formal, informal or advisory administrative rulings by institutional officers or groups exercising formal or advisory authority. Another source of written policy is in contract provisions such as contract forms, informal clauses in letters of employment or of notification of tenure status. Other sources would be legislative rulings, advisory statements of policy, etc., of faculty groups such as faculty senate.

With written policy two types of tenure may be distinguished. The first, tenure by law, may exist for certain state institutions, and the second, tenure by contract may exist for others, including all private institutions. Both types of tenure can be enforced by the courts. As indicated by Byse and Joughlin,[2] legal tenure can be enforced by a court order directing reinstatement, whereas contractual tenure is more likely to be enforced by a court awarding monetary damages.

Tenure provided by moral rather than written commitment even though it is under a widely acceptable academic code, is tenure without legal or contractual commitment.

The elements of a "complete" tenure plan are presented and discussed below. Later in this report the tenure plans of the University of California, California State Colleges and Junior Colleges, along with selected private institutions in California and institutions, both public and private, in other states will be compared in terms of these elements of a "complete" plan.

The Acquisition of Academic Tenure

The original employment of a faculty member, particularly an appointment prior to and leading up to the acquisition of tenure, should be governed by a written commitment with clear and mutually binding terms of appointment. Such written agreements guarantee the protection of both the faculty member and the institution.

Probationary Period--A basic element of a tenure program is a period of time within which a decision must be made as to whether a faculty member will or will not be offered tenure, and during which the performance of a faculty member may be observed and evaluated by the administrative officers of an institution and by the faculty member's academic peers. The AAUP's 1940 statement on tenure states that a probationary

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[1] Byse and Joughlin, op. cit., pp. 167-168.

[2] Ibid., pp. 71-76.

period should not be excessively long--the total period of full-time service not exceeding seven years, including all previous full-time service with the rank of instructor or higher in other institutions, except that the probationary period may extend to as much as four years, even if the total full-time service in the profession thereby exceeds seven years.[1]

Eligible Ranks--A second element of a tenure plan is a specification as to individuals eligible for tenure. In some plans tenure can be conferred on a faculty member regardless of rank after he has served the specified number of years. In others, tenure can be conferred only upon appointment to the two top professional ranks, or promotion to these ranks after serving for a specified maximum number of years at a lower professional rank.[2] In such cases as the latter, the eligible faculty member is subject to the "up or out" principle.

Evaluative Criteria--The establishment of evaluative criteria to determine whether an individual is to be given tenure is another important element of a tenure plan. The best judgment possible on a teacher's competence and promise of continuing growth before a tenure determination is made will mitigate future dismissal proceedings. These criteria will vary from institution to institution as to content, wording and the importance placed upon certain criterion,[3] and should be available to the individual to be evaluated. Documentation of these criteria in the tenure plan is useful to both institution and teacher.

Procedures to Determine the Granting or Denial of Tenure--A stated procedure to be followed in the process of determining whether a faculty member is, or is not, to be granted tenure is clearly another element of a tenure plan. Procedures will vary among institutions but, in the judgment of most writers on academic tenure, all should involve appropriate individuals in departmental teaching staff, department heads, faculty committees, deans, the president and the governing board.

Procedure for Appeal When Tenure is Denied--Another element of a tenure plan is a procedure whereby an individual who feels he has been denied tenure in violation of academic freedom can appeal his denial of tenure.

Termination of Tenure

The heart of a tenure plan are the criteria and procedure established for the termination of tenure. The seriousness of

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[1]The exception here noted applied only to an institution whose maximum probationary period exceeds four years.

[2]Byse and Joughlin, op. cit., p. 9-10

[3]Ibid., pp. 28-34 for example of criteria.

a dismissal procedure, to both the individual and the institution demands evaluative measures that are sound and appropriate and a procedure for judgment such that there is not likely to be unwarranted criticism of the verdict. For an individual whose academic tenure is terminated by dismissal may, in fact, find that he has lost all access to the academic community. Aspects of these final two elements of a tenure plan are discussed in more detail below.

Criteria for Termination--The formulation of criteria for the termination of tenure is an essential element of a soundly developed tenure plan. Byse and Joughlin in their extensive study of tenure in American Higher Education found great variety among institutions in the wording used to state institutional criteria. They found that all, however, fall into the major groupings of "cause" with occasionally some qualification such as adequate or good, "professional incompetence", "immorality", "crime", "incapacity or disability", "institutional disloyalty", "religious criteria" and "financial exigencies".[1]

Procedures for Termination--The final element in a tenure plan, the development and documentation of the procedure to be followed when the termination of a tenured position is to be sought, is the most important. The procedure will include the elements in a term now in common use in the academic world "academic due process".[2]

Byse and Joughlin found great diversity among the tenure plans of institutions with respect to these procedures, but found that all could be included in the following five distinct areas of procedure.[3]

1. Procedure for informal adjustment and conciliation.

2. Procedure preliminary to and in preparation for, a formal hearing.

   a. notice of charges and evidence to be introduced
   b. statement of rules to govern the hearing

3. Procedures for constituting a hearing body.

   a. faculty committee
   b. governing board

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[1]Byse and Joughlin, op. cit., pp. 44-51.

[2]For a detailed statement on academic due process see Academic Due Process, a policy statement of the American Civil Liberties Union prepared by that organization's national Academic Freedom Committee (1954); reprinted in AAUP Bulletin 42: 655-661 (1956).

[3]Byse and Joughlin, Ibid., p. 53.

c. combination of groups

4. Procedures in the formal hearing.

a. all parties present
b. separation of prosecuting and judicial functions
c. counsel for both sides
d. cross examination
e. presenting and "summoning" witnesses
f. full record of hearing
g. prompt adjudication

5. Procedure for appeal of decision.

1940 STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE

In the earlier discussion of academic freedom as an objective of tenure, the statement on academic freedom in the 1940 Statement of Principles on Academic Freedom and Tenure was cited. The statement on academic tenure from this same document is presented below. It should again be emphasized that this document was a joint effort of the American Association of University Professors and Association of American Colleges and has not only been officially endorsed by over 60 organizations, but has been adopted in its entirety by many colleges as their official tenure plan, and has been followed in "general" in the tenure plans of many other colleges.

Academic Tenure

(a) After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

(1) The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.

(2) Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the provisio that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that his

new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.

(3) During the probationary period a teacher should have the academic freedom that all members of the faculty have.

(4) Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges against him and should have the opportunity to be heard in his own defense by all bodies that pass judgment upon his case. He should be permitted to have with him an adviser of his own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from his own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institutions.

(5) Termination of a continuous appointment because of financial exigency should be demonstratably bona fide.

Interpretations

At the conference of representatives of the American Association of University Professors and the Association of American Colleges on November 7-8, 1940, the following interpretations of the 1940 Statement of Principles on Academic Freedom and Tenure were agreed upon:

1. That its operation should not be rectroactive.
2. That all tenure claims of teachers appointed prior to the endorsement should be determined in accordance with the principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure.

3. If the administration of a college or university feels that a teacher has not observed the admonitions of Paragraph (c)[1] of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning his fitness for his position, it may proceed to file charges under Paragraph (a) (4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

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[1]Paragraph (c) is found on page I-3 of this report.

Chapter II

TENURE POLICIES IN CALIFORNIA INSTITUTIONS OF HIGHER EDUCATION

The tenure policies of California's three public segments of higher education and the policies of a representative group of private California institutions are presented below and are compared in terms of the elements of a "complete" tenure plan considered in the previous chapter.

PUBLIC JUNIOR COLLEGES

Academic tenure in the Public Junior Colleges is governed by the same California law[1] as the public elementary and secondary schools. As pointed out in a California Teachers Association pamphlet[2] on the California tenure law, tenure, as defined by that law, "does not establish a condition which is irrevocable". This, the pamphlet continues, is due to two major legal limitations:

> First, tenure in California is statutory and not contractual. The state has the power to amend, or abrogate any and all tenure laws through legislative action. . . .
>
> A second legal limitation on tenure is defined in the process of dismissal of permanent teachers. The removal of a teacher from permanent status is not intended to be an easy process for otherwise there would be little protection for teachers being discharged for personal, political, religious, or trivial reasons. The tenure law provides for dismissal for certain stated causes through a stipulated process. These causes give sufficiently wide latitude for dismissing a teacher who is not conducting himself in a professionally satisfactory manner, but also provides due process for the teacher with the burden of proof resting on the school district.

The Acquisition of Tenure

Public Junior Colleges must grant academic tenure to a teacher when he is employed for the fourth consecutive school year. During this probationary period of three years, the governing board has the right, under certain conditions, to

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[1] California Education Code: Sections 13304 - 103450.

[2] California Teachers Association: General Provisions of the California Tenure Law, 1964. Much of the information in this chapter on academic tenure in the Junior College has been taken from this pamphlet.

release a teacher from employment at the end of the first, second, or third year. The decision to grant tenure after three consecutive years of probationary services is discretionary on the part of the governing board.

The tenure law does not provide any evaluative criteria to be used in determining whether tenure is to be granted or denied. The law does, however, state that probationary teachers may be dismissed at the end of the school year "for cause only"[1] and such dismissal "shall relate solely to the welfare of the schools and the pupils thereof". The law also specifies that the following legal steps must be taken for the dismissal of a probationary period at the end of the school year:

1. Written notification from the governing board, on or before May 15th, to the teacher that his services will not be required for the ensuing school year, and stating reasons for dismissal.

2. Delivery of such notice in person, or by registered mail.

3. Teacher so notified may request, within five days of notification, hearing to determine the cause of dismissal.

4. If the hearing is requested, such hearing is held in accordance with Chapter 5 of Part I of Division 3 of Title 2 of the Government Code. In school districts with a.d.a. (average daily attendance) less than 85,000 the hearing may be held by the school board or a hearing officer. In districts over 85,000 a.d.a., the hearing must be conducted by a hearing officer.

5. The determination by the school board as to the sufficiency of the cause for dismissal shall not be subject to judicial review.

6. All expenses of the hearing, including the cost of a hearing officer, shall be paid by the governing board from district funds.[2]

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[1]See page II-3 for "causes" for dismissal of a permanent teacher.

[2]C.T.A. General Provisions of the California Tenure Law, op. cit., p. 9.

It would appear, therefore, that although specific evaluative criteria for determining tenure are omitted from the law, that the legal procedures established for the dismissal of a probationary teacher would require the use of rigorous and substantive evaluation.

The law also does not specify the procedures to be followed for the acquisition of tenure, except when tenure is to be denied--as indicated above.

Termination of Tenure

The California tenure law is very specific concerning the criteria and procedure for dismissal of a tenured Junior College teacher.

Criteria for Dismissal--The causes for which a tenured teacher may be dismissed are listed in the Education Code as follows:[1]

1. Immoral or unprofessional conduct.

2. Commission, aiding or advocating the commission of acts of criminal syndicalism.

3. Dishonesty

4. Incompetency

5. Evident unfitness for service.

6. Physical or mental condition unfitting him to instruct or associate with children.

7. Persistent violation of or refusal to obey school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him.

8. Conviction of a felony or of any crime involving moral turpitude.

9. Violation of Section 8455 of the code. (No teacher. . . shall advocate or teach communism with the intent to indoctrinate any pupil with, or inculcate a preference in the mind of any pupil for communism.)

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[1] Ibid., p. 9-10

10. Refusal to answer questions regarding membership in the Communist Party since October 3, 1945, or on present personal advocacy of forceful or violent overthrow of the United States Government or its subdivisions. (Agencies authorized to ask these questions include investigating committees of State and National legislative bodies and school boards.)

11. Present membership in the Communist Party or failure to have submitted a verified statement within a 90-day period following the effective date of Code Section 12953 that Communist Party membership since October 3, 1945, was terminated in good faith.

Procedure for Dismissal--The procedure established in law for the dismissal of tenured Junior College teachers, closely parallels the procedure described in Chapter I for a "complete" tenure plan, and contains all the elements associated with "academic due process". The basic features of the procedure are listed below:[1]

1. Charges must be in writing and must be verified.

2. Written notice of intention to dismiss at the end of 30 days unless the teacher demands a hearing, together with a copy of the charges, must be given to the teacher.

3. If the cause is 'incompetency' the teacher must have at least 90 days preliminary written notice thereof specifying the nature of the incompetency so as to give him an opportunity to correct the alleged faults.

4. The teacher may, within 30 days from service of the notice of intent to dismiss, demand a hearing. Such hearing is by the Superior Court of the county in which the district is located, and the court decides whether the charges are true and constitute sufficient cause for dismissal. If the court so decides, but not otherwise, the board may dismiss, but is not required to do so.

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[1] Ibid., p. 10-11

5. The court hearing is a regular trial in Superior Court, and the findings of the court are subject to appeal.

6. A teacher may not be deprived of appeal to the court on questions of law and fact even when dismissal is due to a supposed decrease in enrollments or the discontinuance of services rendered by the district.

7. Revocation or suspension of a credential nullifies tenure rights. Hence, such revocation or suspension can only be made in accordance with law and after proper notice and hearing.

In any trial involving dismissal, the teacher or the governing board may request a panel of experts to study and report on the charges involved, and such report or any part thereof may be admitted as evidence in the court trial, subject to the examination of the competence and qualifications of the expert witnesses.

THE CALIFORNIA STATE COLLEGES

The statutes of California as contained in the Education Code specifies that the Trustees of the California State Colleges shall provide by rule for the governance of their appointees and employees, including appointment, tenure and dismissal, pursuant to the applicable provisions of law.[1] The statutes themselves however, specify the criteria and procedure to be used when academic employees, both tenured and non-tenured, are subject to dismissal.[2]

Under the authority provided by these statutes, the Trustees of the California State Colleges have approved, and included in the California Administrative Code, Title V, rules, policies, and procedures for the appointment and accordance or denial of tenure to academic employees.

The Trustees have also included in the Administrative Code[3] a directive to each college to develop procedures whereby tenured

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[1] California Education Code, Sections 23604, 24201

[2] Ibid., Sections 24306, 24307

[3] California Administrative Code, Title V, Section 42701

members of the faculty shall be involved in recommendations to the president relating to academic personnel matters. The Chancellor is directed to make every effort to encourage uniform procedures among the colleges.

Under this direction, each State College has developed policy and procedures with respect to the acquisition and termination of tenure. Although these policies and procedures vary somewhat in their detail and specification from college to college, they are all consistent with applicable provisions of law as contained in the Education Code, the Administrative Code, Title V, or elsewhere.

The Acquisition of Tenure

The Administrative Code, Title V, specifies that the president of each State College, or the president's designee, shall make all appointments and promotions of academic employees, using procedures whereby tenured members of the faculty have been involved in recommendations regarding the appointment or promotion.[1] All such decisions on appointments and promotions may be reviewed and determined by the Chancellor of the State College at the request of tenured members of the faculty involved in the above recommendation. Further, all decisions on academic promotions and appointments which confer or deny tenure may be appealed to the Chancellor by the employee affected.

After serving two semesters or three quarters full-time during each of four successive academic years an academic employee is eligible for the accordance of tenure. As will be noted later, tenure may be accorded after less than four academic years of such service. The normal pattern of according tenure involves the assessment of a faculty member's performance over a period of three academic years, final appraisal and review during the fourth academic year, and the accordance of tenure on the beginning of the fifth year. For those not accorded tenure the fifth year is a terminal "notice" year. An employee initially appointed to the rank of professor may gain tenure on beginning a second consecutive academic year and shall gain tenure on beginning a third consecutive academic year of service unless such year is a terminal "notice" year.[2]

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[1]The Faculty Handbook, California State Colleges, Los Angeles, p. 57, as an example, lists the following faculty right: "1. The faculty member has the right to be fully informed at the time of his employment, and at reasonable intervals thereafter, of the terms and conditions of his teaching contract--including the opportunities for advancement, tenure, and promotion; the opportunities and terms governing sabbatical and other leaves of absence; the terms and conditions of retirement; the ground for dismissal; and all related rights of and any lawful restrictions on the faculty."

[2]California Administrative Code, Title V, Section 43560.

Recommendations for according or nonaccording tenure originate at the department or, where appropriate, divisional level, and pass through appropriate levels to a final review committee which makes recommendations to the president.[1] Tenured faculty participate fully at the various stages of the process. If not accorded tenure the president advises

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[1]The Faculty Handbook, Los Angeles State College, p. 16, states: "Each division of the college has a tenure committee and a formal procedure for evaluating each pre-tenure faculty member's development annually. At the end of each pre-tenure year, the division chairman, after consultation with the department head and the divisional tenure committee, will recommend reappointment or non-reappointment to the Vice President. The qualitative basis for evaluation during pre-tenure years is the same as those used for evaluation for promotion." The following major criteria for promotion are listed on p. 67. "A. Instructional performance. B. Professional achievement. C. Other contributions to the college. The weight given to 'instructional performance' as a factor in the promotion of faculty members assigned to full-time teaching shall exceed that assigned to any of the other criteria. Excellence in the performance in the other criteria shall not warrant serious consideration for promotion unless a high degree of excellence in instructional performance also exists.

"Each of the above criteria is defined and expanded in the following pages. It is not presumed that the list of criteria in any category is complete; rather, it is open-ended and descriptive of the type of criteria to be applied. Neither is it presumed that any candidate for promotion will possess a high degree of excellence in all the three categories.

"It is recognized that there is a fairly well defined level of performance which is considered minimum. This minimum is expected of all faculty and is not employed as a criterion for promotion. These minimum criteria constitute the expected level of performance at the time of employment and upon granting tenure. However, this is not a static level; continued professional growth is expected. For promotion a high degree of quality of performance as indicated in the criteria is expected." If tenure is denied the Handbook provides on pp. 61-62: "In the event of a denial of tenure, or failure to obtain re-employment prior to tenure, the faculty member has the right to appeal to a standing committee of his peers composed of the members of his division's tenure committee.

"If he desires further evaluation of his case he may appeal to the President of the college. In the event an issue of academic freedom, faculty rights, or professional ethics should arise at any stage of the proceedings involving a proposed decision to deny tenure, deny re-employment prior to tenure, dismiss, or deny promotion, any party to the issue may request and will receive a hearing by the Committee on Academic Freedom and Professional Ethics. A recommendation of the Committee on Academic Freedom and Professional Ethics shall be made before any final action is taken."

the employee no later than December 1 that he shall terminate at the end of that college year or if he is appointed to a terminal notice year, at the end of the succeeding college year. Determinations on any appeals to the Chancellor are made by June 1. If any review of the Chancellor's action is made by the Trustees, it is completed by October 1.[1] The notice of intention not to reappoint a probationary academic employee is in writing signed by the president.

Termination of Tenure

As has been noted, the criteria and procedure for the dismissal of a tenured employee are specified in the Education Code.

Criteria for Dismissal--The causes for dismissal of a tenured academic employee are the same as for a probationary academic employee.[2] They are:

(a) Immoral conduct
(b) Unprofessional conduct
(c) Dishonesty
(d) Incompetency
(e) Physical or mental unfitness for position occupied
(f) Failure or refusal to perform the normal and reasonable duties of the position
(g) Conviction of a felony or conviction of any misdemeanor involving moral turpitude
(h) Fraud in securing appointment
(i) Drunkenness on duty
(j) Addiction to the use of narcotic or habit forming drugs

Unprofessional conduct is further defined as including, but not limited to:[3] (a) Membership in, or active support of a "communist front," a "communist action" organization, or a communist organization as those terms are now defined in the act of the Congress of the United States designated as "Internal Security Act of 1950." (b) Persistent active participation in public meetings conducted or sponsored by an organization mentioned in subdivision (a) of this section. (c) Wilful advocacy of the overthrow of the Government of the United States or of the State, by force, violence or other unlawful means, either in or off the campus. (d) Wilful advocacy of communism, either on or off the campus, for the purpose of undermining the patriotism of pupils, or with the intent to indoctrinate any pupil with communism or inculcate a preference for communism in the mind of any pupil.

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[1] California Administrative Code, Title V, Section 43561.

[2] California Education Code, Section 24306

[3] Ibid., Section 24307

Procedure for Dismissal--The Education Code provides that the dismissal of academic employees with tenure be recommended by the president of the college to the trustees through the chancellor.[1] Notice of dismissal for cause of an academic employee in writing and signed by the chancellor or his designee must be served on the employee. The notice sets forth a statement of causes, the events or transactions upon which the causes are based, and the effective date. The notice also contains a statement of the employee's right to answer within 20 days and request a hearing before the State Personnel Board.[2]

If a hearing is requested[3] the State Personnel Board follows the same procedure as in state civil service proceedings and renders a decision affirming, modifying or revoking the

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[1]California Administrative Code, Title V, Section 43524. The grievance procedures on personnel matters as included in the Faculty Handbook California State Colleges, Los Angeles, p. 17, and as listed below would appear to apply to the dismissal of a tenured faculty member: "An individual having a grievance or complaint in personnel matters (appointment, re-appointment, tenure decision, promotion, and the like) should discuss his grievances directly with his immediate supervisor who in most instances, will be a department chairman, with a view to resolving the difficulty. Every effort should be made to find an acceptable solution by informal means.

"If the grievance is not resolved through initial conversations, the individual may submit his grievance to each successive level of administrative authority pertinent to his situation. This submission, at each successive level, should involve faculty committees only if such committees are normally involved in personnel decisions at that level of administrative action in the college. If faculty committees do not normally review personnel recommendations at the level of department, division, or college, the submission should be to the chairman, the dean, and finally, the President.

"If, on the campus where an aggrieved individual serves, there is a Faculty Senate or Council, or other body recognized as having jurisdiction in grievance matters, the individual may appeal from the decision of the President to such body.

"If, the decision of a faculty body, reviewing the decision of the President, is unacceptable either to the President or to the aggrieved individual, the person unready to accept the decision of the faculty body has the right to appeal to the Chancellor of the State Colleges. In no case will the Chancellor entertain an appeal unless all local campus review opportunities have been utilized." The Handbook further states on page 67: "In the event of a proposed decision to dismiss, the faculty member affected has the right to appeal to a committee of his peers composed of five faculty members to include the Chairman of the Faculty Council, the Chairman of the Committee on Committees, the Chairman of the Committee on Academic Freedom and Professional Ethics, and two more faculty members with tenure selected by the President of the college in consultation with the aforementioned officers."

[2]California Education Code, Section 24308

[3]Ibid., Section 24309.

actions taken. In the hearing, the burden of proof is on the party taking the dismissal action.

The hearing, under Civil Service procedure,[1] may be conducted by the Personnel Board or any member or any authorized representative of the board. Witnesses may be subpoened and cross examined. Depositions may be taken. Each side may have counsel. Informal adjustments may be submitted to the board for approval. A decision by the board is made in writing and a rehearing may be requested. Both parties also have the right to seek court action.

Summary

The tenure plan of the California State Colleges, as expressed in the appropriate sections of the Education and Administrative Code, and as implemented by policy on the individual college campuses, conforms closely to the "complete" tenure plan described in Chapter I.

THE UNIVERSITY OF CALIFORNIA

The tenure policy of the University of California is established in the By-Laws and Standing Orders of the Regents of the University.

The Acquisition of Tenure

Academic tenure at the University of California is acquired through promotion or appointment to the ranks of Associate Professor and Professor, or equivalent rank in the astronomer, agronomist and supervisor in physical education series. Also, Clinical Professors and Associate Clinical Professors of Dentistry with an appointment of 50% or more time. The maximum probationary period is eight years--the maximum an academic faculty member can be employed without tenure.[2]

Criteria for Promotion or Appointment--The Instructions to Appointment and Promotion Committees[3] provide the criteria to be used as guides for appointment and promotion. The Instructions state:

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[1] California Government Code, Sections 18670-18682, 19570-19588, 19630. California Administrative Code, Title II, Sections 51-74.

[2] An occasional exception occurs when an individual is continued as a Lecturer or Senior Lecturer beyond the eight-year limit. In this case the appointment is with security of employment--an assurance, like tenure, that employment will not be terminated except for cause and after the opportunity for a hearing before an advisory committee of the Academic Senate.

[3] Handbook for Faculty Members of the University of California pp. 65-69.

The review committee shall judge the candidate with respect to the proposed rank and duties, considering the record of his performance in (a) teaching, (b) research or other creative work, (c) professional activity, and (d) university and public service. In evaluating the candidate's qualifications within these areas, the review committee shall exercise reasonable flexibility, balancing, where the case requires, heavier workload in one area against lighter workload in another. However, superior intellectual attainment, as evidenced both in teaching and in research or creative achievement, is an indispensable qualification for appointment or promotion to tenure position, since the professorship embodies the teaching-research function of the University. The committee must judge whether the candidate is engaging in a program of work that is both sound and productive.

Procedure for Appointment or Promotion--The University reports that the following procedure is used in determining academic appointments and promotions.[1]

> Proposals for appointment or promotion originate in the academic departments. The Chairman of the department prepares a recommendation based upon the studies made and discussed in the department. The recommendation together with supporting materials concerning the candidate's qualifications with respect to each of the four criteria (see attached) is submitted to the Dean of the college of which the department is a part. After review by the dean of the college, the material goes to the Committee on Budget and Interdepartmental Relations of the appropriate division of the Academic Senate. The Committee on Budget and Interdepartmental Relations nominates an Ad Hoc Review Committee of faculty members, some from the originating department and others from related departments. The Ad Hoc Review Committee is

[1]As contained in a letter from the University Vice-President--Educational Relations to the Director of Coordinating Council responding to a request for information on University Tenure Policy and Procedure.

appointed by the Chancellor. The Ad Hoc Review Committee examines all of the available evidence concerning each of the criteria and writes a detailed report of its conclusions and its recommendations. The Budget Committee studies the report of the Ad Hoc Committee and the original documentation emanating from the department, and makes a recommendation to the Chancellor. Administrative action is then taken by the Chancellor or other appropriate authority. The instructions to the Ad Hoc Review Committee (copy attached) state that:

> 'The quality of the faculty of the University of California is maintained primarily through objectives and thorough appraisal, by competent faculty members, of each candidate for appointment or promotion. . . It is the duty of these committees to ascertain the present fitness of each candidate and the likelihood of his pursuing a productive career. Implied in the committee's responsibility for building and maintaining a faculty of the highest excellence is also a responsibility to the candidate for just recognition and encouragement of achievement.'

The Termination of Tenure

The termination of a continuous tenure appointment or an appointment with security of employment at the University is only for "good cause" and after a hearing (if desired) before a properly constituted advisory committee of the Academic Senate.[1] The December 1968, Annual Report on Personnel Matters, by the President, states that:[2]

> . . . the Academic Senate has established on each campus a standing committee, the Committee on Privilege and Tenure, to conduct such hearings following prescribed conditions and procedures. These procedures require due notice of formal charges, which must be in writing and presented to the Committee by the President or his designated representative. Only substantial evidence may be presented. All parties must be afforded opportunity to be present at all sessions of the committee when evidence is

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[1] By-Laws and Standing Orders of the Regents, University of California, p. 32.

[2] Annual Report on Personnel Matters-University of California, December 1968, p. 11.

being presented, to present information and conduct cross-examination, and to be assisted or represented by counsel. A full record of the hearing must be made, and a transcript must be made available upon request to the parties concerned. The findings, conclusions, and recommendations to the Chancellor must be forwarded promptly to the complaining officer, with copies to the defendant. When a dismissal is recommended by the Chancellor, the President reviews the findings and decides whether or not to recommend dismissal to The Regents. Confidentiality must be maintained unless the defendant has authorized otherwise.

PRIVATE INSTITUTIONS

The Association of Independent California Colleges and Universities, in response to a Coordinating Council request for information on academic tenure in the private institutions of California, questioned their membership by postcard as to whether their tenure policy followed in general the tenure principles of the American Association of University Professors;[1] and if so, the length of the probationary period. The institutions were also urged to submit a more detailed statement.

Thirty-two or 66% of the private institutions in the association responded and all but one indicated their tenure policy did in general follow the principles of the AAUP 1940 Statement. The one institutions, a Seminary, pointed out that they had no need for a tenure policy.

The length of the probationary period in 17 of these institutions is seven years. Twelve of the remaining institutions are about equally divided among probation periods of 3, 4, 5 and 6 years. One institution has an 8-year probationary period.

Seven of the institutions[2] supplied further information on their tenure plans. The tenure plans of three of these institutions consist principally in a statement that the institution subscribes to the 1940 Statement of Principles on Academic Freedom and Tenure. The plans in three of the remaining four institutions have relatively little to say about the acquisition of tenure except for stating probationary periods and indicating any limitation on eligible ranks.

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[1] See Chapter I for a discussion of AAUP Statement and Appendix B for the complete statement and endorsing organizations.

[2] Southern California College, University of Redlands, California Institute of Technology, Harvey Mudd, California Baptists College, Occidental, Stanford University.

Two of the four institutions have written statements recognizing and endorsing the principles related to academic due process and two have nothing in their tenure plans with respect to due process. In the case of the latter two institutions, one could infer, however, that there is an unwritten understanding that the elements of due process will be observed since these institutions responded by postcard that their tenure policies were in general agreement with the 1940 AAUP statement on tenure.

COMPARISON OF ACADEMIC TENURE PLANS OF THE UNIVERSITY OF CALIFORNIA, CALIFORNIA STATE COLLEGES, JUNIOR COLLEGES AND PRIVATE INSTITUTIONS

The tenure plans of each of the public segments and the seven private institutions who submitted information on their tenure plans is presented in Table II-1, in terms of the elements of the "complete" tenure plan presented in Chapter I.

Authority for Tenure

As would be expected, the only two segments with all, or partial authority for their tenure plans resting in state statutes are the Junior and State Colleges.

Acquisition of Tenure

The maximum probation period prior to the granting of tenure varies considerably among the public segments, with only the University conforming to the 7-year pattern set by three of the private schools. It should be recalled, however, that in the postcard replies 55% of the private institutions had probationary periods of 7 or more years. As pointed out earlier, the University of California--and possibly other institutions do not consider the seven year period as "probationary," but merely as a period within which a decision must be made as to whether an individual will or will not be offered tenure.

Only one institution--private--limits tenure to the upper two academic ranks. And, although the University grants "tenure" to only the upper two ranks it does grant tenure under the title "security of employment" to certain special ranks.

The University of California is more specific with regard to evaluation criteria and procedure for determining tenure than are the Junior Colleges or the State Colleges, having these elements written into their tenure plan.[1] The public segments are more specific with respect to these elements than the private institutions, only one of which has such procedures written into its plan.

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[1]Tenure plans of individual Junior Colleges and State Colleges frequently state specific criteria for the acquisition of tenure.

Table II-1

COMPARISON OF ACADEMIC TENURE PLANS IN CALIFORNIA PUBLIC INSTITUTIONS WITH SELECTED PRIVATE INSTITUTIONS

NI = No information provided W = Written U = Understood but not written
N = No NS = None stated but plan contains a statement that the AAUP-AAC 1940 Statement on Tenure is subscribed to.

Elements of a Tenure Plan	Public * Inst.			Private Institutions						
	JC	SC	UC	1	2	3	4	5	6	7
1. Authority for Tenure Plan										
1.1 State Statutes	W	W								
1.2 By-Laws and/or Standing Orders Governing Board		W	W	W	NI	NI	W	NI	W	
1.3 Operating Manuals				W						
1.4 Other										
2. Acquisition of Tenure										
2.1 Length of Probation Period[1]	3	4	7	7	7	6	5	6	5	7
2.2 Academic Tenure Limited to Prof. & Assoc. Prof. Ranks	N	N	N[3]	N	NI	N	N	N	N	YES
2.3 Evaluative Criteria for Determining Tenure	N[2]	N[2]	W	NS	NS	W	NI	NS	N	N
2.4 Procedure for Determining Tenure	N[2]	W	W	NS	NS	W	NI	NS	N	N
2.5 Procedure for Appeal if Tenure is denied	W	W	W[4]	N	NI	N	N	N	N	N
3. Termination of Tenure										
3.1 Criteria for Dismissal of Tenured Staff	W	W	W[5]	NS[5]	NS[5]	NI	W	NS[5]	W	W
3.2 Procedure for Dismissal of Tenured Staff	W	W	W	W	NS	W	N	NS	N	W
3.3 Procedure for Informal Adj. of Proposed Dismissal of Tenured Staff	W	W	N	NS	NS	W	N	NS	N	W
3.4 Hearing Permitted Prior To Dismissal	W	W	W	W	W	W	W	W	W	W
3.5 Tenured faculty on hearing body	N[6]	N[6]	W	NS	NS	W	N	NS	N	W
3.6 Notice of charges and evidence	W	W	W	NS	NS	W	N	NS	N	W
3.7 All parties present at hearing	W	W	W	NS	NS	W	N	NS	N	W
3.8 Right to Counsel at hearing	W	W	W	NS	NS	W	N	NS	N	W
3.9 Right to Cross Examination at hearing	W	W	W	NS	NS	W	N	NS	N	W
3.10 Right to Summon Witnesses	W	W	W	NS	NS	N	N	NS	N	W
3.11 Record of Hearing	W	W	W	NS	NS	NI	NI	NS	NI	W
3.12 Procedure for appeal of decision	W	W	N	NS	NS	NI	NI	NS	NI	W

*JC refers to Junior Colleges, SC to State Colleges, UC to University of California.

[1] Experience at other institutions or rank at entry may, in some cases, reduce the time.

[2] Can be determined at local level.

[3] Security of employment for Lecturer and Senior Lecturer.

[4] In grievance procedure.

[5] "Cause", "good cause", or "due cause" only criterion.

[6] Although the state-wide State College tenure plan does not provide for faculty on the final hearing panel, individual State College tenure plans provide for a hearing by a panel of faculty members prior to a campus recommendation for dismissal.

The Junior Colleges and State Colleges have written procedures for appealing a denial of tenure and the University has a grievance procedure which could be used for this purpose. None of the private institutions provide for this appeal.

Termination of Tenure

Four of the institutions in Table II-1 including the University of California state "cause" or some variation such as "due cause" or "good cause" as the criterion for dismissal of a tenured staff member. The remaining institutions attempt to define and interpret "cause" in particular terms--particularly the Junior Colleges and State Colleges.

All institutions except two have a written procedure for the dismissal of a tenured staff member but only four of the institutions, including the Junior Colleges and State Colleges, have a written procedure for the informal adjustment of proposed tenure dismissals.

Each institution has a written specification that the tenured individual facing dismissal is entitled to a hearing if he so desires but only six institutions include in their plans a statement that faculty will be on the hearing panel, and the six includes the three whose tenure plan consists of a statement they subscribe to the AAUP tenure principles. The Junior Colleges and State Colleges are among the institutions not including faculty on the hearing panel.[1]

All three public segments include in their plans each of the six academic due process elements of Table II-1, as do four of the seven private institutions, including the three whose plan is the AAUP tenure statement. Only two institutions--private--make no provision for academic due process.

Three institutions including the Junior Colleges and State Colleges state a provision recognizing some means of further appeal.

Summary

As would be expected, the tenure plans of the three public segments, are more extensive, precise, and detailed, than are the tenure plans of most of the private institutions. The plans of private institutions are generally more informal and tend to paraphrase the 1940 Statement of Principles on Academic Freedom and Tenure, or simply indicate that they subscribe to that statement.

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[1]See footnote 6 for Table II-1 on page II-15.

Chapter III

ACADEMIC TENURE PLAN OF CALIFORNIA PUBLIC INSTITUTIONS COMPARED WITH TENURE PLANS OF SIMILAR INSTITUTIONS IN OTHER STATES

In this chapter the tenure plan of the Junior Colleges is compared with tenure plans of junior colleges in other states. For the State Colleges and University, comparison is made with tenure plans of the institutions regularly used for salary comparison.

All of these tenure plans recognize that a tenured faculty member may be dismissed due to financial exigencies and that these must be demonstrable bona fide, therefore, comparison with respect to this element of tenure is omitted.

ACADEMIC TENURE IN CALIFORNIA JUNIOR COLLEGES COMPARED WITH TENURE IN JUNIOR COLLEGES IN OTHER STATES

The statewide tenure plan for California's public Junior Colleges is compared, in Table III-1, with the statewide plan providing for tenure in junior colleges in Florida and the plan proposed for junior colleges in Texas and Washington. Comparison is also made with tenure plans in seven junior colleges, one of which is in a state with no statutory provision for tenure at any educational level, and one of which is a multi-campus junior college district without tenure but with specified dismissal procedures.[1]

Table III-1 shows that the authority for four of the tenure plans lies in the state statutes as does California's. The rest are based upon Governing Board statutes.

The Acquisition of Tenure

A probation period of three years is required in California Junior Colleges and in seven of the ten tenure plans. One plan requires only two years and two require seven years. None of the plans limit tenure to any particular academic rank.

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[1]Florida, Basic Conditions of the State of Florida Department of Education; Coordinating Board, Texas College and University System. Elements upon which each Junior College is to devise a tenure plan; State of Iowa, Department of Public Instruction; Proposed tenure plans of State of Washington State Board for Community College Education; Junior College District, St. Louis, Missouri; Maracopa College, Phoenix, Arizona; Henry Ford Community College, Dearborn, Michigan; Cuyhoja Community College, Cleveland, Ohio; San Antonio College, San Antonio, Texas; Amarillo College, Amarillo, Texas; Chicago City College, Chicago, Illinois; Triton College, North Lake, Illinois.

Table III-1

COMPARISON OF ACADEMIC TENURE PLANS IN THE PUBLIC JUNIOR COLLEGES OF CALIFORNIA WITH TENURE PLANS IN SELECTED INSTITUTIONS IN OTHER STATES

NI = No information provided W = Written U = Understood but not written
N = No NS = None stated but plan contains a statement that the AAUP-AAC 1940 Statement on Tenure is subscribed to.

Elements of a Tenure Plan	Institutions											
	JC	1	2	3	4[a]	5	6	7	8	9	10	11
1. Authority for Tenure Plan												
1.1 State Statutes	W	W		W			W			W		
1.2 By-Laws and/or Standing Orders Governing Board			W			W		W	W		W	W
1.3 Operating Manuals				W								
1.4 Other												
2. Acquisition of Tenure												
2.1 Length of Probation Period[1]	3	3	7	3		3	2	3	7	3	3	3
2.2 Academic Tenure Limited to Prof. & Assoc. Prof. Ranks	N	N	N	N		N	N	N	N	N	N	N
2.3 Evaluative Criteria for Determining Tenure	N[3]	N	N	N		N	W	N	W	N	N	W
2.4 Procedure for Determining Tenure	N	N	N	W		W	W	W	W	N	N	W
2.5 Procedure for Appeal if Tenure is denied	W	N	N	N		W	N	U	W	U	W	W
3. Termination of Tenure												
3.1 Criteria for Dismissal of Tenured Staff	W	W	W	W[2]	W	W[2]	W[2]	W[2]	W[2]	W[2]	W[2]	W
3.2 Procedure for Dismissal of Tenured Staff	W	W	W	W	W	W	W	W	W	W	W	U
3.3 Procedure for Informal Adj. of Proposed Dismissal of Tenured Staff	W	N	W	N	NI	NI	NI	U	NI	U	U	W
3.4 Hearing Permitted Prior To Dismissal	W	W	W	W	W	W	W	W	W	W	W	W
3.5 Tenured faculty on hearing body	N	N	W	W	NI	W	N	U	W	W	N	W
3.6 Notice of charges and evidence	W	W	W	W	W	W	W	W	W	W	W	W
3.7 All parties present at hearing	W	N	W	NI	W	W	W	W	W	W	W	W
3.8 Right to Counsel at hearing	W	N	W	NI	U	U	W	W	W	W	W	W
3.9 Right to Cross Examination at hearing	W	N	W	W	NI	U	W	W	W	W	W	U
3.10 Right to Summon Witnesses	W	N	W	NI	U	NI	W	W	NI	W	W	U
3.11 Record of Hearing	W	N	W	NI	U	W	W	W	W	W	W	W
3.12 Procedure for appeal of decision	W	W	W	W	N	N	N	W	NI	NI	N	N

[1] Experience at other institutions or rank at entry may, in some cases, reduce the time.

[2] "Cause", "good cause", or "adequate cause", or similar terms the only criteria.

[3] Can be determined at local level.

[a] No tenure plan, but a dismissal procedure is provided in the operating manual.

Seven of the plans conform with the California plan by not specifying the evaluative criteria to be used for determining tenure, but six of the ten plans do specify a procedure for determining tenure whereas the California plan does not. Six of the plans are in agreement with California with respect to stating a procedure for appeal if tenure is denied.

Termination of Tenure

All of the tenure plans, including California's, specify criteria for the dismissal of a tenured teacher, although the majority, seven, only specify "cause." It is of interest to note that the district without a tenure plan defines cause in particular terms. Each plan, except one, specifies a procedure for dismissal, but a procedure for informal adjustment of a proposed dismissal is specified in only three cases and understood in three.

A tenured staff member facing dismissal can request a hearing in every plan--and in the institution without a plan. The hearing panel includes faculty members in six of the eleven comparison plans--but not in California.

The California tenure plan and seven of the eleven comparison plans contain written commitment to all of the academic due process statements of Table III-1. Only five of the plans, including California's, contain written appeals procedures.

Summary

It is evident from Table III-1 that the academic tenure plan for California's Junior Colleges is in substantial agreement with the tenure plans of their comparison institutions--institutions from all sections of the country.

ACADEMIC TENURE IN THE CALIFORNIA STATE COLLEGES COMPARED WITH TENURE IN FOURTEEN INSTITUTIONS WITH WHOM SALARY COMPARISON IS MADE

The academic tenure plan for the California State Colleges is compared in Table III-2, with tenure plan in fourteen[1] of the comparison institutions with whom the State Colleges are compared for salary purposes.

The State Colleges and only three of the 14 comparison institutions have any part of their tenure plan authorized through state statutes. The rest have plans authorized by by-laws of their governing board.

The Acquisition of Tenure

Nine or 64% of the comparison institutions have a probation period extending to seven or more years; two have six year periods; one has a five year period, and two have a probationary period of three years--one year less than the State Colleges.

The State Colleges and twelve or 87% of the comparison institutions do not limit academic tenure to the upper two academic ranks.

Eight of the 14 comparison tenure plans have written criteria for evaluation for tenure. The state-wide State College plan does not, although individual State College plans may specify them. However, the State Colleges and all except two of the comparison institutions have a written procedure for determining tenure--and of the two institutions not having a written plan, one has an "understood" procedure. The institutions are about equally divided as to a written procedure for appeal if a probationary teacher is denied tenure.

The Termination of Tenure

All the institutions have written criteria and procedure for dismissal of a tenured staff, although six of the 14 comparison institutions specify "cause" as the only criterion. No uniformity exists with respect to a procedure for informal adjustment.

All the tenure plans provide for a hearing prior to dismissal and all, except the state-wide State College plan and the plan of one other institution, provide for faculty representation on the hearing panel.[2] With few exceptions, all plans have written

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[1]University of Minnesota, Bowling Green State University, Pennsylvania State University, Oregon State University, University of Massachusetts, State University of New York, Michigan State University, Rutgers University, University of Colorado, New Jersey State College, Southern Illinois University, Wayne State University, University of Kentucky, Northwestern State University.

[2]See footnote 6 for Table II-1, page II-15.

Table III-2

COMPARISON OF ACADEMIC TENURE PLANS OF THE CALIFORNIA STATE COLLEGES WITH SELECTED INSTITUTIONS IN OTHER STATES

NI = No information provided W = Written U = Understood but not written
N = No NS = None stated but plan contains a statement that the AAUP-AAC 1940 Statement on Tenure is subscribed to.

Elements of a Tenure Plan	Institutions															
	SC	1	2	3	4	5	6	7	8	9	10	11	12	13	14	
1. Authority for Tenure Plan																
1.1 State Statutes	W		W			W						W				
1.2 By-Laws and/or Standing Orders Governing Board	W	W	W	W	W		W	W	W	W	W	W	W	W	W	
1.3 Operating Manuals				W		W										
1.4 Other																
2. Acquisition of Tenure																
2.1 Length of Probation Period[1]	4	7	7	7	5	3	7	6	9	7	7	3	7	6	7	
2.2 Academic Tenure Limited to Prof. & Assoc. Prof. Ranks	N	YES	N	N	N	N	N	YES	N	N	N	N	N	N	N	
2.3 Evaluative Criteria for Determining Tenure	N[3]	W	N	N	N	N	W	W	W	W	W	N	W	N	W	
2.4 Procedure for Determining Tenure	W	W	W	U	W	W	W	W	W	W	W	N	W	W	W	
2.5 Procedure for Appeal if Tenure is denied	W	N	W	N	W	U	W	N	N	N	W	W	N	W	N	
3. Termination of Tenure																
3.1 Criteria for Dismissal of Tenured Staff	W	NS	W	W	W[2]	W	W	W[2]	W	W	W[2]	W	W	W[2]	W[2]	
3.2 Procedure for Dismissal of Tenured Staff	W	NS	W	W	W	W	W	W	W	W	W	W	W	W	W	
3.3 Procedure for Informal Ajd. of Proposed Dismissal of Tenured Staff	W	NS	N	U	N	W	N	NI	U	W	U	N	N	W	W	
3.4 Hearing Permitted Prior To Dismissal	W	NS	W	W	W	W	W	W	W	W	W	W	W	W	W	
3.5 Tenured faculty on hearing body	N[4]	NS	W	W	W	N	W	W	W	W	W	W	W	W	W	
3.6 Notice of charges and evidence	W	NS	W	W	W	W	W	W	W	W	W	W	W	W	W	
3.7 All parties present at hearing	W	NS	N	W	W	W	W	W	W	W	W	W	W	W	W	
3.8 Right to Counsel at hearing	W	NS	W	W	W	W	W	W	W	W	W	W	W	W	U	
3.9 Right to Cross Examination at hearing	W	NS	N	W	W	NI	W	W	W	W	U	W	N	W	U	
3.10 Right to Summon Witnesses	W	NS	N	W	W	W	W	W	N	W	W	W	N	W	U	
3.11 Record of Hearing	W	NS	W	W	W	NI	W	W	W	W	W	W	W	W	W	
3.12 Procedure for appeal of decision	W	NS	W	W	W	NI	N	N	N	N	W	W	N	N	W	

[1] Experience at other institutions or rank at entry may, in some cases, reduce the time.

[2] "Cause", "due cause" or "adequate cause" are specified criterion.

[3] Can be determined at local level.

[4] Although the state-wide State College tenure plan does not provide for faculty on the final hearing panel, individual State College tenure plans provide for a hearing by a panel of faculty members prior to a campus recommendation for dismissal.

statements providing for the due process elements--one institution not providing for all parties being present at the hearing, two not specifying cross examination and three not providing for the summoning of witnesses.

The comparison institutions are about divided equally with respect to a written procedure for appeal of a dismissal decision.

Summary

Except for having a decidedly shorter probation period and not including faculty on the final appeal panel established to hear a dismissal case, the tenure plan of the State Colleges is remarkably similar to the tenure plans of the comparison institutions.

ACADEMIC TENURE AT THE UNIVERSITY OF CALIFORNIA AND AT THE INSTITUTIONS WITH WHOM SALARY COMPARISON IS MADE

Academic tenure at the University of California is compared, in Table III-3, with tenure plans at seven of the institutions with whom University salaries are compared.[1]

Authority for Tenure

All the institutions in Table III-3 have the authority for their tenure policy based in the by-laws of their governing boards.

Acquisition of Tenure

All the institutions except one have a probationary period that equals or exceeds the seven years period in which the University of California must make a decision as to whether or not an individual will be offered tenure--the one institution has a probation period of six years. Three of the comparison institutions confer tenure only upon the upper two academic ranks--associate professor and professor, two make no distinction by rank and this information was not available from two universities.

Whereas the University of California has written evaluative criteria and procedure for promotion or appointment to the tenure ranks, and grievance procedures are available when desired, the tenure plans of the comparison institutions vary considerably with respect to these elements. One comparison institution has written criteria for evaluation, two have "understood" criteria and two have none. Three institutions have a written procedure for determining tenure, one has an understood procedure and one has none. Only one comparison institution has a procedure for appeal if tenure is denied and five have none.

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[1]Cornell University, University of Michigan, University of Wisconsin, State University of New York, Stanford, Harvard, University of Illinois.

Table III-3

COMPARISON OF ACADEMIC TENURE PLANS OF THE UNIVERSITY OF CALIFORNIA WITH TENURE PLANS OF SELECTED INSTITUTIONS

NI = No information provided
N = No
W = Written
U = Understood but not written
NS = None stated but plan contains a statement that the AAUP-AAC 1940 Statement on Tenure is subscribed to.

Elements of a Tenure Plan	Institutions									
	UC	1	2	3	4	5	6	7		
1. Authority for Tenure Plan										
1.1 State Statutes										
1.2 By-Laws and/or Standing Orders Governing Board	W	W	W	W	W	W	W	W		
1.3 Operating Manuals	W									
1.4 Other										
2. Acquisition of Tenure										
2.1 Length of Probation Period[1]	7	6	8	7	7	7	7	8		
2.2 Academic Tenure Limited to Prof. & Assoc. Prof. Ranks	N[3]	YES	NI	NI	N	YES	N	YES		
2.3 Evaluative Criteria for Determining Tenure	W	U	U	NI	W	N	N	NI		
2.4 Procedure for Determining Tenure	W	W	U	NI	W	N	W	NI		
2.5 Procedure for Appeal if Tenure is denied	W	N	N	NI	N	N	W	N		
3. Termination of Tenure										
3.1 Criteria for Dismissal of Tenured Staff	W[2]	W	W[2]	W[2]	W	W	W	W	W	
3.2 Procedure for Dismissal of Tenured Staff	W	W	W	W	W	W	W	NI		
3.3 Procedure for Informal Ajd. of Proposed Dismissal of Tenured Staff	U	W	W	U	W	W	U	NI		
3.4 Hearing Permitted Prior To Dismissal	W	W	W	W	W	W	W	NI		
3.5 Tenured faculty on hearing body	W	W	W	W	W	W	W	NI		
3.6 Notice of charges and evidence	W	W	W	W	W	W	W	NI		
3.7 All parties present at hearing	W	W	W	W	W	W	W	NI		
3.8 Right to Counsel at hearing	W	W	W	W	W	W	W	NI		
3.9 Right to Cross Examination at hearing	W	W	W	W	W	W	W	NI		
3.10 Right to Summon Witnesses	W	NI	W	W	W	W	NI	NI		
3.11 Record of Hearing	W	W	W	W	W	W	W	NI		
3.12 Procedure for appeal of decision	W	N	W	W	N	W	W	NI		

[1] Experience at other institutions or rank at entry may, in some cases, reduce the time.

[2] "Cause", "due cause" or similar term the only criteria.

Termination of Tenure

The comparison institutions have tenure plans for the termination of tenure that are almost identical with the University of California. All provide criteria and a procedure for dismissal although three institutions, including the University of California, have only a criterion of "cause." All the institutional tenure plans provide for a hearing prior to dismissal, and all provide for all the elements of academic due process.

PERCENTAGE OF FULL-TIME FACULTY ON TENURE

The percentage of full-time faculty on tenure in eleven California Junior Colleges and in four large out-of-state junior colleges is shown in Table III-4. The percentages for California vary from 50.7% to 86%, with a median of 64.3%. The percentages for out-of-state junior colleges, with the exception of the new college, exceed this median.

Almost 54% of the California State College full-time faculty are on tenure, a percentage exceeded by five of the eight comparison institutions for which such data were available.

Data on University of California comparison institutions were not available for comparison with the 57.5%[1] of full-time faculty on tenure at the University.

Other studies of academic tenure have found similar variation in the percentage of faculty on tenure. Data from three of these studies are summarized in Table III-5.

A 1962 study of 31 major universities by Dressell found that when the percentage of <u>total</u> faculty on tenure in each institution were categorized by percentage ranges, four universities were in a range of only 35-49 percent whereas three were in a range of 70-74% and one was in a range as high as 85-89%. The remaining universities were rather equally distributed among the other ranges.

A 1955 study by Dennison of eight small colleges, found that the percentages of full-time faculty on tenure in two colleges were in the 35-49% range and two were in a range as high as 70-74%.

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[1] Including Lecturer and Senior Lecturer with security of employment.

Table III-4

PERCENT OF FULL-TIME FACULTY ON TENURE AND OUT-OF-STATE
SPRING 1969

Institution	Full-Time Faculty	Tenured Full-Time Faculty	Percent of Full-Time Faculty on Tenure
Selected California Junior Colleges			
Foothill	340	175	52%
Kern	269	160	60%
Los Angeles	--	--	86%
Los Rios	525	330	59%
Pasadena	543	448	83%
Peralta	490	309	63%
San Bernardino	197	142	72%
San Francisco	398	278	70%
San Mateo	286	193	68%
Ventura	205	104	51%
Yuba	84	54	64%
Out-of-State Junior Colleges			
Institution 1	--	--	80-90% (Est.)
Institution 2	--	--	70%
Institution 3	--	--	66%
Institution 4	--	--	28% (4th year of operation)
California State Colleges (1967-68)			54%
Comparison Institutions			
1	--	--	66%
2	--	--	65%
3	--	--	55%
4	--	--	60%
5	--	--	57%
6	--	--	42%
7	--	--	40%
8	--	--	47%
University of California (1967-68)			58%[1]

[1]Includes Lecturer and Senior Lecturer with security of employment.

Table III-5

STUDIES OF PERCENTAGE OF FACULTY ON TENURE

Percentage Range	Michigan State 1962 Study[1]	Dennison Study[2]	Byse and Joughlin Study[3]	
			Total Faculty	Full-Time Faculty
	Number of Institutions in Each Percentage Rank			
25 - 29			10[4]	
35 - 49	4	2	58[5]	
50 - 54	8			10[6]
55 - 59	5	1		58[7]
60 - 64	4	3		
65 - 69	6			
70 - 74	3	2		
85 - 89	1	—		
	31	8		

[1]Paul L. Dressel, "A Review of the Tenure Policies of Thirty-One Major Universities". The Educational Record (July 1963), pp. 248-253. Based on total faculty

[2]Charles P. Dennison, Faculty Rights and Obligations, TC. 1955.

[3]Byse and Joughlin, op. cit., pp. 162-165.

[4]Average for the 10 institutions with more than 200 faculty was 28%.

[5]Average for the 58 institutions with less than 200 faculty was 44.6%.

[6]Average for the 10 institutions with more than 200 faculty was 52%.

[7]Average for the 58 institutions with less than 200 faculty was 55.9%.

Byse and Joughlin in their study of 80 institutions (which excluded state teachers colleges and Junior Colleges) found that in 58 of the institutions with less than 200 faculty, the average percentage of full-time faculty with tenure was 55.9 and in 10 institutions with more than 200 faculty the percentage was 52.

It is evident that the percentage of full-time faculty with tenure in the University of California and in the State Colleges varies little from percentages in similar institutions in other states, and it is also evident that the variation in the percentages in California Junior Colleges is not different from the variation that exists in other states.

Chapter IV

POLICY ALTERNATIVES TO ACHIEVE THE OBJECTIVES OF TENURE

Senate Concurrent Resolution 43 requests that this report state the objectives of tenure and set forth policy alternatives to achieve these objectives.

As pointed out in the discussion of the objectives of tenure in Chapter I of this report, if institutions of higher education through their faculties are to serve and benefit the society which authorizes and maintains them they have the responsibility of assuring society that faculty members are free to present and discuss in the classroom the subjects they teach, to engage in scholarly research and to state and publish their thoughts and conclusions relevant to their teaching and research. Institutions also have the responsibility of assuring faculty members that when they speak, write and act as citizens, and do not create the impression they are institutional spokesmen, they are free to do so without fear of censorship or reprisal by the institution.[1] As a further responsibility, institutions must assure themselves that they have a means of attracting faculty members of presumed quality, retaining only those that demonstrate--or hold promise of demonstrating--this quality, and when necessary, dismissing faculty for due cause and through procedures involving academic due process.

In order to fulfill these responsibilities, institutions of higher education have devised a system--generally referred to as tenure, academic tenure, or tenure plan--that provides faculty with both security of employment and economic security and yet permits the institution to select and retain those faculty members who have demonstrated their abilities through a probationary period, and when necessary and with appropriate processes dismiss faculty members to whom they have previously given this security.

The basic objectives of a tenure plan are therefore, first, a guarantee that faculty members will enjoy academic freedom and economic security through security of employment and second, assurance that the institution will have time for adequate evaluation of faculty performance and promise before security of employment is granted and after it is granted will have available a procedure for dismissal when such dismissal becomes necessary.

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[1] See pages I-2 and I-6.

With respect to the first of the above objectives, a review of the literature revealed no alternatives to security of employment as a means of providing academic freedom and economic security. In addition, an extensive survey of educational associations, organizations, and institutions throughout the United States was made by Council staff to determine if they were aware of, or could suggest, alternatives to tenure which could achieve these objectives. None of the replies received by Council staff provided any alternatives to security of employment as a means of providing academic freedom and economic security. Further, Council staff could devise no alternatives.

It is the conclusion of Council staff that academic freedom and economic security can be provided only by security of employment within a tenure plan and that no satisfactory alternatives have been devised.

With respect to the first part of the second objective indicated above--time for adequate evaluation and review of faculty performance and promise before security of employment is granted--a review of the literature and the same survey of educational organizations, associations and institutions provided no alternative to the probationary period that now exists in every tenure plan examined by the Council staff as a means of achieving this objective. The staff did, however, receive or discover in the literature numerous alternatives in procedures related to the acquisition of tenure, such as in the length of the probation period, in the ranks to which security of employment should be granted, and in the criteria and procedures to determine if security of employment is to be granted and for appeal when security of employment is denied.

With respect to the last part of the second objective, the Council staff found no alternatives to dismissal procedures based upon cause and academic due process. All alternatives suggested were related to elements of the dismissal process rather than to the process itself, such as alternatives in the definitions of "cause," in the composition of the hearing panel or board, and in appeals of the hearing panel's decision.

It is, therefore, the conclusion of the Council staff that time for adequate evaluation of faculty performance and promise and dismissal for cause through the procedures of academic due process can be provided only through a tenure plan and that no satisfactory alternatives have been devised.

The conclusion that there is no alternative to tenure as a means of achieving the above objectives does not mean that the procedures of some tenure plans cannot be improved.

Appendix A

Senate Concurrent Resolution No. 43

Introduced by Senator Stiern

February 6, 1969

REFERRED TO COMMITTEE ON EDUCATION

Senate Concurrent Resolution No. 43—Relating to a study of tenure in the University of California, the California State Colleges, and the public junior colleges.

WHEREAS, The laws and administrative regulations governing the University of California, the California State Colleges, and the public junior colleges in California establish rules for the appointment, reappointment, dismissal, and demotion of academic personnel; and

WHEREAS, Taken as a whole, those rules establish privileges of tenure for full-time faculty in regular rank; and

WHEREAS, There is a wide spectrum of opinion regarding the value and effect of tenure in the University of California, the California State Colleges, and the public junior colleges; and

WHEREAS, Questions are now raised about the objectives and effects of tenure in the University of California, the California State Colleges, and the public junior colleges; and

WHEREAS, Current events in higher education require an immediate review of this subject so that the laws and administrative regulations may be kept current with changing circumstances; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby directs the

LEGISLATIVE COUNSEL'S DIGEST

SCR 43, as introduced, Stiern (Ed.). Higher education: tenure.

Directs Coordinating Council for Higher Education to study current California tenure rules in the University of California, the California State Colleges, and the public junior colleges; compare such rules in public and private institutions of higher education in California and other states; state the objectives of tenure; set forth policy alternatives to achieve those objectives; and report thereon not later than May 8, 1969.

Sen. Fin.—Yes.

Coordinating Council for Higher Education to study the current rules of tenure in the University of California, the California State Colleges, and the public junior colleges; compare such rules of tenure in public and private institutions of higher education in California and in other states; state the objectives of tenure; and set forth policy alternatives to achieve those objectives; and be it further

Resolved, That the Legislature hereby directs the Coordinating Council for Higher Education to report on the subject of this resolution as soon as possible but not later than May 8, 1969; and be it further

Resolved, That the Secretary of the Senate shall transmit copies of this resolution to the members of the Coordinating Council for Higher Education.

APPENDIX B

Academic Freedom and Tenure

1940 STATEMENT OF PRINCIPLES

In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges agreed upon a restatement of principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure. This restatement, known to the profession as the 1940 *Statement of Principles on Academic Freedom and Tenure*, was officially endorsed by the following organizations in the years indicated:

Association of American Colleges	1941
American Association of University Professors	1941
American Library Association (adapted for librarians)	1946
Association of American Law Schools	1946
American Political Science Association	1947
American Association of Colleges for Teacher Education[1]	1950
Association for Higher Education, National Education Association	1950
Eastern Psychological Association	1950
American Philosophical Association:	
Western Division	1952
Eastern Division	1953
Southern Society for Philosophy and Psychology	1953
American Psychological Association	1961
American Historical Association	1961
Modern Language Association of America	1961
American Economic Association	1962
American Farm Economic Association	1962
American Philosophical Association, Pacific Division	1962
Midwest Sociological Society	1963
Organization of American Historians[2]	1963
American Philological Association	1963
American Council of Learned Societies	1963
Speech Association of America	1963
American Sociological Association	1963
Southern Historical Association	1963
American Studies Association	1963
Association of American Geographers	1963
Southern Economic Association	1963
Classical Association of the Middle West and South	1964
Southwestern Social Science Association	1964
Archaeological Institute of America	1964
Southern Management Association	1964
American Educational Theatre Association	1964
South Central Modern Language Association	1964
Southwestern Philosophical Society	1964
Council for the Advancement of Small Colleges	1965
Mathematical Association of America	1965
Arizona Academy of Science	1965
American Risk and Insurance Association	1965
Academy of Management	1965
American Catholic Historical Association	1966
American Catholic Philosophical Association	1966
Association of State Colleges and Universities	1966
Association for Education in Journalism	1966
Western History Association	1966
Mountain-Plains Philosophical Conference	1966
Society of American Archivists	1966
Southeastern Psychological Association	1966
Southern Speech Association	1966
American Association for the Advancement of Slavic Studies	1967
American Mathematical Society	1967
College Theology Society	1967
Council on Social Work Education	1967
American Association of Colleges of Pharmacy	1967
American Academy of Religion	1967
American Catholic Sociological Society	1967
American Society of Journalism School Administrators	1967
The John Dewey Society for the Study of Education and Culture	1967
South Atlantic Modern Language Association	1967
American Finance Association	1967
Catholic Economic Association	1967
United Chapters of Phi Beta Kappa	1968
American Society of Christian Ethics	1968
American Association of Teachers of French	1968
Appalachian Finance Association	1968
Association of Teachers of Chinese Language and Culture	1968

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to assure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher[3] or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.

Tenure is a means to certain ends; specifically: (1) Freedom of teaching and research and of extramural activities and (2) a sufficient degree of economic

[1] Endorsed by predecessor, American Association of Teachers Colleges, in 1941.

[2] Formerly the Mississippi Valley Historical Association.

[3] The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.

security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

Academic Freedom

(a) The teacher is entitled to full freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

(b) The teacher is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.

(c) The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence he should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he is not an institutional spokesman.

Academic Tenure

(a) After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

(1) The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.

(2) Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution it may be agreed in writing that his new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.

(3) During the probationary period a teacher should have the academic freedom that all other members of the faculty have.

(4) Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges against him and should have the opportunity to be heard in his own defense by all bodies that pass judgment upon his case. He should be permitted to have with him an adviser of his own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from his own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.

(5) Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

Interpretations

At the conference of representatives of the American Association of University Professors and of the Association of American Colleges on November 7-8, 1940, the following interpretations of the 1940 *Statement of Principles on Academic Freedom and Tenure* were agreed upon:

1. That its operation should not be retroactive.
2. That all tenure claims of teachers appointed prior to the endorsement should be determined in accordance with the principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure.
3. If the administration of a college or university feels that a teacher has not observed the admonitions of Paragraph (c) of the section on *Academic Freedom* and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning his fitness for his position, it may proceed to file charges under Paragraph (a) (4) of the section on *Academic Tenure*. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility and the American Association of University Professors and the Association of American Colleges are free to make an investigation.